



State of Rhode Island
RHODE ISLAND BOARD OF EDUCATION
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Enclosure 6c
August 17, 2021

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August 17, 2021

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation –
S. Doe v. Beacon Charter School

The Appeals Committee of the Council on Elementary and Secondary Education met on June 15, 2021, to hear oral argument on the appeal of the following matter:

S. Doe v. Beacon Charter School

RECOMMENDATION: THAT, in the matter of S. Doe vs. Beacon Charter School, the Commissioner's decision is remanded, as presented.

STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

S. DOE

vs.

**BEACON CHARTER
SCHOOL**

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DECISION

This is an appeal by student S. Doe (“Doe”) from the decision of the Commissioner of Education (“Commissioner”), dated December 18, 2020, whereby the Commissioner determined that Doe was properly dis-enrolled from the Beacon Charter School (“Beacon”) and thus Beacon is no longer responsible for Doe’s special education and related services.

The facts underlying this appeal are contained in the Commissioner’s written decision dated December 18, 2020 (the “Decision”) as follows. Doe enrolled at Beacon in August of 2017. *Decision at 2.* Doe is eligible to receive special education and related services under the Individuals with Disabilities Education Act (the “IDEA”). *Id.* After an incident in December of 2018, Doe attended a therapeutic day program at Bradley Hospital. *Id. at 2-3.* Doe’s parents notified Beacon that he would be attending Vantage Point at Aspiro, a program in Utah, beginning on March 4, 2019. *Id. at 3.* Beacon communicated with Vantage Point at Aspiro in order to plan for Doe’s eventual return to Beacon. *Id.* In May of 2019, Doe transferred to Spark Academy, also in Utah. *Id.* Doe’s individualized education program (“IEP”) team at Beacon conducted a meeting in June of 2019 and recommended that Doe be placed in a therapeutic day

school. *Id.* Doe remained enrolled at Spark Academy. *Id. at 4.* In writing, and at a subsequent IEP meeting in October of 2019, Beacon again recommended that Doe attend a therapeutic day program in order to provide Doe with a free appropriate public education (a “FAPE”) in the least restrictive environment. *Id.* Doe’s parents received notice of another IEP meeting to be conducted on December 4, 2019. *Id.* Instead, on that date, Doe’s father was informed by the Superintendent of Beacon that Doe was dis-enrolled from Beacon. *Id.* Doe petitioned the Commissioner for a hearing to direct Beacon to re-enroll Doe and develop an IEP that will provide him with a FAPE. The hearing process concluded on August 24, 2020.

In the Decision, it was determined that Beacon was Doe’s local education agency responsible for providing Doe with a FAPE from August of 2017 through at least October 11, 2019. *Id. at 6-8.* Further, the Decision notes that Doe is a resident of Woonsocket, Rhode Island for school purposes, that he is entitled to a FAPE from the district of residence, and that he is entitled to equitable services from the district in which his private school is located in Utah. *Id. at 6-7.* Doe’s request was denied, finding that the dis-enrollment action taken by Beacon terminated Beacon’s role as Doe’s LEA on December 4, 2019.

Doe appealed and asks the Council to overturn the Decision and re-enroll Doe at Beacon. Doe alleges that the Decision is in error as it violates RIGL §16-77-3.1 and the IDEA, requiring Beacon to remain the local education agency responsible for developing an IEP, providing Doe with a FAPE. Beacon counters that the Decision was properly decided, and that it does not meet the lofty standard of review necessary for this Council to disturb such a decision. We have reviewed the record, the parties’ briefs, and invited the parties to present their arguments to the Council Appeals Committee on June 15, 2021. During that time, the Council Appeals Committee members asked questions related to the time period between October 11, 2019 and December 4,

2019, related to the dis-enrollment of Doe. Counsel for Beacon objected that facts related to the notice received by Doe were not developed by the hearing officer and cannot be developed on appeal. We agree. This body does not sit as a finder of fact. *See, e.g., Andrews-Mellouise v. East Providence School Committee* at 4, Council on Elementary and Secondary Education (March 9, 2021) (“The Council does not act as a fact finder when hearing appeals from decisions of the Commissioner.”).

In considering Doe’s appeal, we must remain mindful of the standard of review for appeals brought to the Council on Elementary and Secondary Education (“Council”). Review is limited to whether the Commissioner’s decision is “patently arbitrary, discriminatory, or unfair.” *Altman v. School Committee of the Town of Scituate*, 115 R.I. 399, 405 (R.I. 1975). However, in order to evaluate Doe’s claim of error for violation of the IDEA and Doe’s rights thereunder, further facts related to the notice received by Doe of the dis-enrollment and actions taken related thereto are necessary. Therefore, in accordance with the Council’s rights on appeal, the Council hereby remands this case for further development of the facts related to the notice given to Doe of the dis-enrollment and other events during the relevant time period, as well as further consideration as to whether such notice and dis-enrollment was consistent with his IDEA rights.¹ 200-RICR-30-15-4.4(G). In so doing, we note that the hearing officer may identify other fact findings necessary to properly consider this matter further.

Doe asks us to overturn the Commissioner’s decision and order re-enrollment in Beacon. As outlined herein, we cannot. However, further development of the record is needed for a final

¹ While not brought into issue by either party, we further note that the Decision states that Woonsocket, Rhode Island would become the responsible local education agency for purposes of providing Doe with a FAPE. However, we cannot tell from the Decision whether notice was provided to the district nor whether they were given any opportunity to challenge such a determination.

appeal determination in this matter. For the reasons stated herein, the decision of the Commissioner is remanded.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on June 15, 2021.

Council on Elementary and Secondary Education,

Barbara Cottam, Chair

_____, 2021

Amy Beretta, Esq., Appeals Committee Chair

_____, 2021